

the purposes of compliance with this part or for other purposes. Similarly, the OCC may find that a particular intangible asset, deferred tax asset or credit-enhancing interest-only strip need not be deducted from Tier 1 or Tier 2 capital. Conversely, the OCC may find that a particular intangible asset, deferred tax asset, credit-enhancing interest-only strip or other Tier 1 or Tier 2 capital component has characteristics or terms that diminish its contribution to a bank's ability to absorb losses, and may require the deduction from Tier 1 or Tier 2 capital of all of the component or of a greater portion of the component than is otherwise required.

(b) *Risk weight categories.* Notwithstanding the risk categories in sections 3 and 4 of appendix A to this part, the OCC will look to the substance of the transaction and may find that the assigned risk weight for any asset or the credit equivalent amount or credit conversion factor for any off-balance sheet item does not appropriately reflect the risks imposed on a bank and may require another risk weight, credit equivalent amount, or credit conversion factor that the OCC deems appropriate. Similarly, if no risk weight, credit equivalent amount, or credit conversion factor is specifically assigned, the OCC may assign any risk weight, credit equivalent amount, or credit conversion factor that the OCC deems appropriate. In making its determination, the OCC considers risks associated with the asset or off-balance sheet item as well as other relevant factors.

[55 FR 38800, Sept. 21, 1990, as amended at 66 FR 59630, Nov. 29, 2001]

Subpart B—Minimum Capital Ratios

§ 3.5 Applicability.

This subpart is applicable to all banks unless the Office determines, pursuant to the procedures set forth in subpart C, that different minimum capital ratios are appropriate for an individual bank based upon its particular circumstances, or unless different minimum capital ratios have been established or are established for an individual bank in a written agreement or

a temporary or final order pursuant to 12 U.S.C. 1818 (b) or (c), or as a condition for approval of an application.

§ 3.6 Minimum capital ratios.

(a) *Risk-based capital ratio.* All national banks must have and maintain the minimum risk-based capital ratio as set forth in appendix A (and, for certain banks, in appendix B).

(b) *Total assets leverage ratio.* All national banks must have and maintain Tier 1 capital in an amount equal to at least 3.0 percent of adjusted total assets.

(c) *Additional leverage ratio requirement.* An institution operating at or near the level in paragraph (b) of this section should have well-diversified risks, including no undue interest rate risk exposure; excellent control systems; good earnings; high asset quality; high liquidity; and well managed on-and off-balance sheet activities; and in general be considered a strong banking organization, rated composite 1 under the Uniform Financial Institutions Rating System (CAMELS) rating system of banks. For all but the most highly-rated banks meeting the conditions set forth in this paragraph (c), the minimum Tier 1 leverage ratio is 4 percent. In all cases, banking institutions should hold capital commensurate with the level and nature of all risks.

[55 FR 38800, Sept. 21, 1990, as amended at 61 FR 47367, Sept. 6, 1996; 64 FR 10199, Mar. 2, 1999]

§ 3.7 Plan to achieve minimum capital ratios.

Effective December 31, 1990, any bank having capital ratios less than the minimums required under § 3.6 (a) and (b) shall, within 60 days, submit to the OCC a plan describing the means and schedule by which the bank shall achieve the applicable minimum capital ratios. The plan may be considered acceptable unless the bank is notified to the contrary by the OCC. A bank in compliance with an acceptable plan to achieve the applicable minimum capital ratios will not be deemed to be in violation of § 3.6.

[55 FR 38800, Sept. 21, 1990]